

Exhibit 346

United States of America ex rel. Ven-A-Care of the Florida Keys, Inc., et al.
v. Dey, Inc., et al., Civil Action No. 05-11084-PBS

**Exhibit to the August 28, 2009 Declaration of Sarah L. Reid in Support
of Dey's Opposition to Plaintiffs' Motion for Partial Summary Judgment**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 -----X
4 IN RE PHARMACEUTICAL INDUSTRY)

5 AVERAGE WHOLESALE PRICE LITIGATION)

6 -----X Volume III

7 THIS DOCUMENT RELATES TO:) MDL NO. 1456

8 The City of New York, et al.,) Civil Action

9 V.) No. 01-12257-PBS

10 Abbott Laboratories, et al.)

11 -----X

12 THIS DOCUMENT RELATES TO:) PORTIONS OF THIS

13 State of California, ex rel.) TRANSCRIPT ARE

14 Ven-A-Care v. Abbott Laboratories,) DESIGNATED

15 Inc., et al., Case No.) HIGHLY

16 03-cv-11226-PBS) CONFIDENTIAL

17 -----X

18 OCTOBER 2, 2008

19 DEPOSITION OF DEY, L.P. AND DEY, INC.

20 BY PAMELA MARRS - VOLUME III

21
22 Reported By: WENDY L. VAN MEERBEKE, CSR No. 3676

1 I knew before. I just don't remember.

2 Q. Okay. Could you turn to the page
3 that's marked in the upper right-hand corner
4 23733? And in the right-hand column, there is a
5 paragraph A entitled "Integrity of Data Used to
6 Establish or Determine Government Reimbursement."
7 Do you see that?

8 A. I do.

9 Q. And it states, "Many federal and state
10 healthcare programs establish or ultimately
11 determine reimbursement rates for pharmaceuticals
12 either prospectively or retroactively. Using
13 price and sales data directly or indirectly
14 furnished by pharmaceutical manufacturers, the
15 government sets reimbursement with the
16 expectation that the data provided are complete
17 and accurate. The knowing submission of false,
18 fraudulent or misleading information is
19 actionable."

20 Did I read that correctly?

21 A. Yes.

22 Q. And if we skip down to the next

1 paragraph, it says, "Where appropriate,
2 manufacturers' reported prices should accurately
3 take into account price reductions, cash
4 discounts, free goods contingent on a purchase
5 agreement, rebates, up-front payments, coupons,
6 goods in kind, free or reduced price services,
7 grants for other price concessions or similar
8 benefits offered to some or all purchasers."

9 Did I read that correctly?

10 A. Yes.

11 Q. And when you became aware of this
12 document, were you aware of this language here?

13 A. I mean, it's always been our practice
14 to report prices accurately as we understood the
15 requirements.

16 Q. Are Dey's AWP's that it reports for --
17 for its generic drugs -- do they take into
18 account price reductions, cash discounts, free
19 goods, rebates and other price concessions?

20 A. No, they don't because it says, "Where
21 appropriate." And it's not our understanding
22 that it's appropriate for AWP.

1 Q. Do you know whether or not risks
2 arising from the AWP litigation was a factor in
3 Mylan's decision-making?

4 MR. DOYLE: And to the extent that it
5 obviously involves anything privileged, you can't
6 testify to it.

7 THE WITNESS: I mean, I can't tell you
8 for sure, but I can tell you it never came up in
9 any conversations I was involved in.

10 MR. HENDERSON:

11 Q. So you haven't --

12 A. I -- I'm -- you know, who knows what
13 goes on behind closed doors. But from my
14 perspective, what I saw was purely a business
15 decision from a strategy standpoint to -- to
16 basically bring Dey closer into the Mylan fold
17 and -- and maximize the opportunities they could
18 get out of it. I never heard any reference to
19 the litigation in that context.

20 MR. HENDERSON:

21 Q. Okay. Coming back to the more
22 immediate subject of Dey's reporting for --

1 reporting prices for its generic products, am I
2 correct in understanding that as a general
3 matter, Dey's practice has been for generic
4 products to set its AWP at or around the time of
5 launch and to not change it thereafter,
6 understanding that there have been a few
7 exceptions?

8 A. That has been the general practice.
9 Yes.

10 Q. Okay. And if Dey, for example, reduces
11 its WAC on a generic product, it would keep the
12 AWP unchanged, generally speaking; is that true?

13 A. That's correct.

14 Q. Why is that?

15 A. Because -- why is it we don't change
16 our AWP when we change our WAC for generics?

17 Q. Yes.

18 A. It's my understanding that that's what
19 the industry practice was, and that's basically
20 what everyone in the industry did.

21 Q. Any other reason?

22 A. Not that I can recall. No.

1 is a percentage below AWP, however you choose to
2 look at it.

3 MS. HANSCOM:

4 Q. Does Dey have a definition of the term
5 "level playing field"? I've heard you use it.

6 MR. DOYLE: Objection as to form.

7 THE WITNESS: When I use it, what I
8 mean is the same rules apply to all the
9 competitors in the marketplace.

10 MS. HANSCOM:

11 Q. And which rules are you talking about?

12 A. Well, in the case of -- when I referred
13 to it in the past, it has typically been with
14 respect to AWP. And if -- if the rules are
15 defined and well established and everyone follows
16 the same rules, then that would be a level
17 playing field. If it's expected that one company
18 do something different from another company which
19 puts it at a competitive disadvantage in the
20 marketplace, then that would not be a level
21 playing field.

22 Q. Did Dey ever ask Medi-Cal -- do you